IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

RCRev..No. 348 of 2007

RCA.3/2006 of I ADDL.DISTRICT COURT, KOZHIKODE
RCP.56/2004 of MUNSIFF COURT, QUILANDY
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REV.PETITIONER/APPELLANT/RESPONDENT:

P.K.BALAKRISHNAN, S/O.UNNARA,
RESIDING AT KIZHAKKETHOTTUMUKHAM
PARAMBA, PANTHALAYINI AMSOM AND
DESOM, KOYILANDI TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT/PETITIONER:

ORAKKAL NEETHU, D/O.DIVAKARAN,
RESIDING AT PUTHANMADATHIL HOUSE,
PANTHALAYINI AMSOM AND DESOM,
KOYILANDI TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 348 of 2007

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant and the respondent is the landlady. The respondent filed the Rent Control Petition under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'), claiming eviction of the tenanted premises. The brief facts of the case are the following:

2. The scheduled room originally belonged to the grandmother of the respondent. The same was taken on lease by the tenant in the year 1983. On 27.3.2004, the grandmother executed a will bequeathing the said room in favour of the respondent. The testator died on 20.4.2004. Soon thereafter, the respondent issued a notice to the tenant on 16.9.2004 claiming arrears of rent from

1.6.2003. When the Rent Control Petition was filed, apart from the ground under Section 11(2)(b) of the Act, the ground under Section 11(3) of the Act was also included. The respondent wanted the room for starting a Tax Consultancy Office for her. The revision petitioner/tenant resisted the application, contending that the need urged is not bona fide and she does not require the room for running the Consultancy business. Further, it was submitted that the tenant is using the room in connection with his business, which is being run in the adjacent room. He is depending on the income from the said business for his livelihood.

3. From the side of the landlady, PWs 1 and 2 were examined and Exhibits A1 to A5 were marked. From the side of the respondent, no evidence was tendered. The Rent Controller allowed the application on both the grounds. The appellate authority affirmed it. Hence this revision.

4. The learned counsel for the petitioner attacked the finding under Section 11(3) of the Act

alone. It is submitted that the rent found to be due has already been deposited. The learned counsel also submitted that the testamentary succession of the tenanted room by the respondent herein will amount to a transfer inter vivos, as contemplated under the third proviso to Section 11(3) of the Act. It is also contended that the respondent is not a "landlord", as defined under Section 2(3) of the Act, with reference to the third proviso. Therefore, the respondent should have waited at least for an year to institute the Rent Control Petition. In this case, she succeeded to the estate on 20.4.2004. The Rent Control Petition was filed on 20.11.04. So, the petition is not maintainable, it is submitted.

5. The third proviso to Section 11(3) of the Act reads as follows:

> "Provided further that no landlord whose right to recover possession arises under an instrument of

> transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument."

Black's Law Dictionary defines "inter vivos" as "between living persons." So, transfer inter vivos means a transfer between living persons. So, the testamentary succession on the death of the testator can in no way be described as transfer between two living persons. Therefore, the contention of the learned counsel for the petitioner that the testamentary succession involved in this case is a transfer inter vivos is plainly untenable.

6. The definition of the landlord, contained under Section 2(3) of the Act, is an inclusive definition. In other words, it is not exhaustive. The ordinary meaning of the landlord is not excluded by the said definition. By the death of the grandmother, the respondent herein became the

owner and therefore, she is entitled to receive the rent for the building. Therefore, the contention of the learned counsel for the petitioner that she is not a "landlord" for the purpose of the third proviso to Section 11(3) of the Act is also manifestly untenable.

7. The next contention raised by the learned counsel for the petitioner is that from the evidence on record, it is clear that the respondent is not competent to run a Tax Consultancy Centre. In the cross-examination, she has admitted her ignorance about filing of Income Tax return, the difference between the financial year and the assessment year, etc. Further, some of the certificates produced by her have been issued to her after the institution of the Rent Control Petition. So, the finding of bona fide requirement by the authorities below is untenable and is liable to be interfered with, it is submitted.

8. We notice that the respondent was a graduate in Commerce when the Rent Control Petition

was filed. Further, at the relevant time, she has completed the M.Com. course and she was awaiting her results. A graduate in Commerce can definitely run a Tax Consultancy Centre. She, being a beginner in a profession, may not be a proficient in the subject. But, she will acquire sufficient experience in the long run. We notice that the date of Exhibit A3 certificate, issued by the Tax Study Centre, was before the Institution of the Rent Control Petition. Further, the prospect of the landlady, not becoming a successful tax practitioner, is not a ground to reject her claim to start a Tax Consultancy Centre. Having regard to the facts of the case, we notice that the finding of fact made by the authorities below that the requirement is bona fide, cannot be interfered with. We fully agree with the reasons and conclusions of the authorities below. No other point was raised.

In the result, the revision fails and it is dismissed. The learned counsel for the petitioner

prayed for some time to vacate the tenanted premises. Having regard to the facts of the case, the petitioner is granted two months' time from today to vacate the tenanted premises on condition that he files an unconditional undertaking before the execution court, in the form of an affidavit, undertaking to vacate the tenanted premises within two months from today. The affidavit shall be filed within three weeks from today. The arrears of rent, if any remaining unpaid, shall be paid within three weeks from today. The monthly rent payable shall also be paid to the respondent/ landlady till the scheduled room is given vacant possession by the petitioner.

(K.Balakrishnan Nair, Judge)

23th November, 2007

(K.P.Balachandran, Judge)

tkv